

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 20, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC010128

Ex Parte: In the matter of
establishing rules governing
the discontinuance of local
exchange telecommunications services
provided by competitive local
exchange carriers

ORDER FOR NOTICE AND COMMENT OR REQUESTS FOR HEARING

To date, the State Corporation Commission ("Commission") has granted certificates to over 200 competitive local exchange carriers ("CLECs") authorizing the provision of telecommunications services within the Commonwealth of Virginia. Not all of these companies presently provide service to Virginia customers in the Commonwealth of Virginia. However, recently a number of those providing service in Virginia, or their corporate parents, have filed for protection under the United States Bankruptcy Code.¹ The Commission is concerned that the

¹ See In re: Investigation of Provision of Service of PICUS Communications of Virginia, Inc., Case No. PUC000325, Order Terminating Investigation, issued February 15, 2001; In re: Application of Northpoint Communications of Virginia, Inc., For cancellation of certificates, Case No. PUC010097, Final Order issued April 19, 2001; and In re: Application of Teligent Services, Inc., For approval to discontinue local exchange service in the Richmond Standard Metropolitan Statistical Area, Case No. PUC010112, Order Granting

consequences of such action by a CLEC may adversely impact or disrupt service to consumers in Virginia. We have previously promulgated Rules Governing the Offering of Competitive Local Exchange Service, 20 VAC 5-400-180 ("Local Rules"). Section D 7 of the Local Rules states that:

[n]o new entrant providing local exchange telephone service shall abandon or discontinue local exchange service without the approval of the commission, and upon such terms as the commission may prescribe.

In light of the increasing financial difficulties many CLECs are facing, the Commission is of the opinion and finds that it should establish a proceeding to adopt specific rules governing the discontinuance of local exchange telecommunications services provided by CLECs. Accordingly, the Commission requested its Staff to develop a set of proposed rules establishing specific duties for CLECs and incumbent local exchange carriers ("ILECs") to follow before local exchange service is discontinued by any CLEC. The proposed Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers ("Proposed Rules") are shown as Attachment A to this Order. The Commission's Division of Information Resources is directed to forward the Proposed Rules to the Registrar of Virginia for publication in the Virginia Register of Regulations

Motion for Emergency Relief and Petition for Reconsideration, issued May 22, 2001.

and to make the Proposed Rules available on the Commission's website. Interested persons should be permitted to comment, propose modifications or supplements to, or request a hearing on the Proposed Rules.

In addition, the Commission requests comments from interested parties on the following questions:

1. Should the Commission adopt a contingency plan that requires the ILEC as the carrier of last resort to take back the CLEC's customers if a CLEC discontinues service? If so, under what circumstances, i.e., in only emergency situations or only for resale customers?
2. If the Commission requires the ILEC to take back the CLEC's customers, what additional rules are necessary?
 - a. Should there be some transitional period after the customer has been provided service by the ILEC (i.e., 30 days) whereby the customer has to formally subscribe to the ILEC's service or it will be disconnected by the ILEC? How should notice of such a requirement and possible disconnection be given to customers?
 - b. What tariffed rates would apply to the services provided by the ILEC during the transition

period, i.e., tariffed rates of the ILEC or the CLEC?

3. Should the Commission implement an allocation procedure to distribute CLEC customers to other CLECs in case of discontinuance of service? If so, how should such a plan be developed and implemented?
 - a. How should CLECs be included in such an allocation procedure? Should CLECs that only want to provide service to some customers or in a specific service area be included?
 - b. Should a CLEC that does not offer like services or charges higher rates than the discontinuing CLEC be permitted to have customers allocated to it?
 - c. Should the discontinuing CLEC be required to share its customer information with other CLECs in order for those CLECs to offer service to customers before they are disconnected?
4. What action by this Commission, if any, is needed to ensure that CLECs that have discontinued service in Virginia relinquish their NXXs in order to conserve numbering resources?
5. What action by this Commission, if any, is needed to ensure that collocation space in an ILEC's premise

used or reserved by a CLEC that has discontinued service be made available for use by other CLECs?

Pending the adoption of final rules in this proceeding, the Commission suggests that any CLEC desiring to discontinue service or cease operations in Virginia should use the Proposed Rules for guidance in requesting authority to discontinue service pursuant to 20 VAC 5-400-180 D 7.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC010128.

(2) The Commission's Division of Information Resources shall forward the Proposed Rules to the Registrar of Virginia for publication in the Virginia Register of Regulations.

(3) On or before June 22, 2001, the Commission's Division of Information Resources shall make a downloadable version of the Proposed Rules available for access by the public at the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>. The Clerk of the Commission shall make a copy of the Proposed Rules available for public inspection and provide a copy of the Proposed Rules, free of charge, in response to any written request.

(4) Interested persons wishing to comment, propose modifications or supplements to, or request a hearing on the Proposed Rules shall file an original and fifteen (15) copies of such comments, proposals, or requests with the Clerk of the Commission, State Corporation Commission, P.O. Box 2118,

Richmond, Virginia 23218, on or before July 30, 2001, making reference to Case No. PUC010128.

(5) On or before July 1, 2001, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A PROCEEDING TO
ADOPT RULES GOVERNING THE DISCONTINUANCE OF
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES
PROVIDED BY COMPETITIVE LOCAL EXCHANGE
CARRIERS, CASE NO. PUC010128

Recognizing that the financial difficulties facing some competitive local exchange carriers ("CLECs") may impact the provision of continuous local exchange telephone service to consumers in Virginia, the State Corporation Commission ("Commission") now proposes rules to govern the discontinuance of local exchange telecommunications services provided by CLECs. Accordingly, the Commission has proposed rules ("Proposed Rules") establishing the specific duties for CLECs and incumbent local exchange carriers to follow before local exchange telecommunications services are discontinued by any CLEC.

Interested parties may obtain a copy of the Proposed Rules by visiting the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>, or by requesting a copy from the Clerk of the Commission. The Clerk's office will provide a copy of the Proposed Rules to any interested party, free of charge, in response to any written request for one. The Proposed Rules will also be forwarded to the Office of the Registrar of Regulations for publication in the Virginia Register of Regulations.

Any person desiring to comment in writing or request a hearing on the Proposed Rules may do so by directing such comments or requests for hearing on or before July 30, 2001, to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments and requests for hearing must refer to Case No. PUC010128. Requests for hearing shall state with specificity why such concerns cannot be adequately addressed in written comments.

If no requests for hearing are received, a formal hearing with oral testimony may not be held and the Commission may make its decisions administratively, based upon papers filed in this proceeding.

VIRGINIA STATE CORPORATION COMMISSION

(6) This matter is continued for further orders of the Commission.

STATE CORPORATION COMMISSION
Division of Communications

CHAPTER 421.

RULES GOVERNING THE DISCONTINUANCE OF LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES PROVIDED BY COMPETITIVE LOCAL
EXCHANGE CARRIERS.

20 VAC 5-421-10. Definitions.

The words and terms defined in 20 VAC 5-400-180 A shall
have application to this chapter. In addition, the following
words and terms, when used in this chapter, shall have the
following meanings unless the context clearly indicates
otherwise:

"Bankruptcy petition" is the document that initiates a
bankruptcy case under Title 11 of the United States Code (11
U.S.C. § 101 et seq.) and refers to either Chapter 7 for
liquidation or Chapter 11 for reorganization of the debtor. The
term includes both voluntary and involuntary bankruptcy
petitions.

"Certificate" is the authority granted by the commission to
a telephone utility to operate in the state pursuant to § 56-
265.4:4 of the Code of Virginia.

"Competitive local exchange carrier" or "CLEC" shall have
the same meaning as "new entrant", as defined in accordance with
the Rules Governing the Offering of Competitive Local Exchange
Telephone Service (20 VAC 5-400-180 A).

"Discontinuance" is a permanent cessation of telephone operations by a CLEC to its customers or the termination of individual local exchange telecommunications service offerings to its customers.

"Grandfathered customers" means the continuation of service to current customers of a service or feature that has been obsoleted.

"Incumbent local exchange carrier" or "ILEC" shall have the same meaning as "incumbent local exchange telephone company" or "incumbent", as defined in accordance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service (20 VAC 5-400-180 A).

"Obsolete a service" is the discontinuance of a service or feature to new customers.

"Resale" occurs when a CLEC purchases telecommunications services on a wholesale basis from the ILEC and resells those services to its customers.

"Unbundled network element" or "UNE" includes the various physical and functional elements of an ILEC's network offered to CLECs on an unbundled basis as a requirement of the Telecommunications Act of 1996 (47 U.S.C. § 251(c)(3)).

20 VAC 5-421-20. Requirements for discontinuance.

A. A CLEC intending to cease operations and discontinue the provision of all local exchange telecommunications services in Virginia shall file a formal petition for authority to do so with the commission. The petition shall provide:

1. The number of affected customers and types of service offerings provided;

2. A description of customer notification efforts by the CLEC and copies of any written notice or notices sent or proposed to be sent to the CLEC's customers;

3. A full explanation of the reasons for the proposed discontinuance of operations, including any plan to transfer the CLEC's customers to other carriers; and

4. A request for cancellation of the petitioning CLEC's certificate or certificates to provide local exchange telecommunications services and, if applicable, interexchange telecommunications services upon the approval for discontinuance of the CLEC's local exchange operations. If cancellation of the certificate or certificates is not requested, a concise statement of why the commission should not cancel the certificate or certificates should be given.

B. Customers shall be provided at least 30 days' notice prior to disconnection of service.

C. The CLEC shall provide a toll-free number that customers may call with inquiries prior to the discontinuance of local exchange service.

D. The Commission shall determine if sufficient notice has been provided to customers and shall prescribe any additional notice requirements it deems necessary.

20 VAC 5-421-30. Requirements for partial discontinuance.

A. A CLEC intending to partially discontinue local exchange telecommunications services on a geographic basis, by functional type (e.g. resale) or by class (e.g. residential), shall file a formal petition for authority to do so with the commission. The petition shall provide:

1. The number of affected customers and types of service offerings provided;

2. A full explanation of the reasons for partial discontinuance of service, including any plans to transfer the CLEC's affected customers to other services or carriers; and

3. The proposed tariff revisions with a proposed effective date.

B. Customers shall be provided at least 30 days' notice of the proposed discontinuation of service. The commission

shall prescribe the actual notice and its form; however, a CLEC may include the proposed notice with its petition.

20 VAC 5-421-40. Requirements to withdraw a tariffed service offering.

A. A CLEC intending to withdraw a tariffed service offering currently provided to existing customers shall file a formal petition for approval with the commission. The petition shall provide:

1. The number of affected customers;

2. A full explanation of the reasons the CLEC proposes to withdraw the service offering, including a description of any alternative service offerings available from the CLEC; and

3. The proposed tariff revisions with a proposed effective date.

B. Customers shall be provided at least 30 days' notice prior to the proposed effective date of the withdrawal of service. The commission shall prescribe the actual notice and its form; however, the CLEC may file a proposed notice in its petition.

C. A CLEC intending to withdraw a tariffed service offering not currently provided to any existing customers shall

file its proposed tariff administratively with the Division of Communications. The CLEC shall provide an attestation with the proposed tariff that it has no customers currently subscribing to the service offering.

20 VAC 5-421-50. Requirements to obsolete a tariffed service offering.

A. A CLEC intending to obsolete a tariffed service offering and to grandfather it to its current customers without restriction of those customers' ability to retain that service shall provide at least 30 days' written notice to the affected customers.

The CLEC shall file its proposed tariff revisions with the Division of Communications at least 30 days prior to the proposed effective date and include a copy of the notice that was sent or will be sent to customers.

The commission may require a CLEC to obtain approval to obsolete a tariffed service offering filed in accordance with this section if it determines that notice to customers was not adequate or that approval is required to protect the public interest.

B. A CLEC that proposes to obsolete a tariffed service offering and to grandfather current customers in a manner that

restricts those customers' ability to retain the service shall be required to obtain approval from the commission in the same manner as for withdrawal of tariffed service in 20 VAC 5-421-40 currently provided to existing customers.

20 VAC 5-421-60. Administrative cancellation of certificates.

A CLEC that is found to have ceased providing local exchange telecommunications services to its customers in Virginia without providing proper notice to the commission and to its customers under 20 VAC 5-421-20 shall be in violation of this chapter, and each of its operating certificates may be administratively cancelled.

20 VAC 5-421-70. Bankruptcy requirements.

A CLEC that is the subject of a bankruptcy petition shall provide to the commission a complete copy of the bankruptcy petition and any plan filed under Chapter 11 of the Bankruptcy Code. Within 7 days of a bankruptcy petition being filed by or against a CLEC or its corporate parent, the CLEC shall provide written notice of such bankruptcy petition to the commission. The written notice shall include the following information and be updated as necessary:

1. Whether the CLEC currently provides service offerings to customers in Virginia and the number of its customers and types of services provided;

2. The name, address, and telephone number of any trustee in bankruptcy; and

3. A proposed plan to notify the CLEC's customers of potential discontinuation of their local exchange telecommunications services as a result of the bankruptcy petition.

20 VAC 5-421.80. Duties of ILECs.

A. An ILEC shall not, for nonpayment of charges by the CLEC to the ILEC, disconnect services provided to a CLEC that could reasonably be expected to result in disconnection of the CLEC's customers without approval of the commission.

B. An ILEC proposing to disconnect a CLEC's resale customers shall file, if there is no pending proceeding commenced by the CLEC under this chapter, a formal petition with the commission requesting approval at least 30 days prior to the proposed date of disconnection. The petition shall provide:

1. The number of CLEC resale customers to be disconnected and the proposed disconnection date;

2. The amount claimed to be owed to the ILEC by the CLEC;

3. A description of any efforts that the ILEC and the CLEC have taken to prevent disconnection or disruption of service to the CLEC's customers; and

4. Any proposal to notify or transfer the CLEC's resale customers to the ILEC or to other carriers.

C. An ILEC proposing to disconnect other service offerings (e.g. UNEs) to a CLEC shall file, if there is no pending proceeding commenced by the CLEC under this chapter, a formal petition with the commission requesting approval at least 30 days prior to the proposed date of disconnection. The formal petition shall provide:

1. A description and quantification of the service offerings to the CLEC to be disconnected;

2. The amount claimed to be owed by the CLEC to the ILEC; and

3. A description of any efforts that the ILEC and the CLEC have taken to prevent disconnection or disruption of service to the CLEC's customers.

D. The ILEC shall make every effort to assist in the expedient and timely transfer of any customer of a CLEC that is discontinuing local exchange telecommunications services to that

customer's new carrier. To prevent the disruption of service to customers in such circumstances, the ILEC shall be required to implement expedited ordering procedures for the customer's new CLEC to follow.